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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

ANNOUNCEMENT OF THE GOVERNMENT'S DECISION TO
EXTEND THE UNITED KINGDOM TERRITORIAL SEA

Memorandum by the Secretary of State for Trade

At their meeting on 2 July last year (OD(80)17th Meeting, Item 1 the Committee decided to consider further in 6 months time, if the United Nations Law of the Sea Conference (UNLOSC) had not by then completed its work, whether to announce, without waiting for the conclusion of UNLOSC, the Government's decision in principle to extend the United Kingdom territorial waters to 12 nautical miles.

2. UNLOSC made progress in the second half of 1980 but did not complete its work. Prospects for it doing so this year have been seriously set back by the United States Government's decision, following the change of Administration, to review their whole UNLOSC policy. This blocked real progress at the Tenth Session, which was adjourned on 16 April; and the review will not now be complete when the Session resumes in August.

3. The position on our announcement has therefore been reviewed by the Ministerial Group on Maritime Affairs (MISC 19) under my chairmanship.

4. Environmental pressure remains strong. The Royal Commission on Environmental Pollution, which may report soon, can be expected to come down in favour of extension. An early announcement that legislation was in preparation would serve to defuse such pressure. So long as no announcement has been made, the Government will remain open to severe political criticism in the event of a maritime disaster with pollution consequences, on the grounds that they had not taken all available measures to protect our coasts. Even though the additional powers from an extension are less than is generally supposed, and would not necessarily prevent a disaster, they would be useful in terms of prosecuting offenders who subsequently come to our ports.

5. The public posture of the Government, pending an announcement, can only continue to be that we are awaiting developments in UNLOSC. But the present deadlock there makes this line increasingly difficult to defend.
6. The United States' attitude to extension remains a problem. Although the majority of countries have already claimed wider limits than 3 miles, the Americans are against an early announcement by the United Kingdom. They think this would increase the danger of the 12 miles territorial sea concept becoming generally accepted in international law before safeguards had been secured in relation to those international straits which would fall wholly within territorial seas; and they are apprehensive about the effect that could have on freedom of navigation for the United States navy in these straits. This attitude does not seem to be well founded, and the risk of a British announcement seriously upsetting the Americans appears small enough to be acceptable. But we must get our timing right. It would be provocative if we were to announce our decision while a Session of UNLOSC was actually in progress. We need American support on Articles of particular interest to the United Kingdom, eg delimitation of maritime boundaries and removal of installations on the seabed. And we do not want to seem to be acting out of despair at the outlook for UNLOSC.
7. The European Community's Common Fisheries Policy (CFP) negotiations are also relevant to the timing of our announcement. The base points permitted under international law from which our 12 mile territorial limit would be drawn are in places more advantageous than the base points for our existing 12 mile fishery limits. As a result, a fisheries package defined to allow access to non-British vessels up to any specified distance from the new territorial base points would deprive other member states and in particular the French of access to 5 very small areas in which they are now entitled to fish, 2 of them actually worth fishing in. The French are probably aware of the fisheries implications of an extension of the United Kingdom territorial sea, since they have agreed to our use of features which would be the new base points in discussing with us continental shelf delimitation in the Channel. In strict logic of course a simple announcement of our intention to extend the territorial sea would not, in itself, have any concrete effects on fishery limits nor would it prejudice the French or other member states' rights of access. Ministry of Agriculture, Fisheries and Food Ministers would therefore not regard an announcement as potentially

damaging in this context. Foreign and Commonwealth Office Ministers would have preferred to avoid timing which would give the French a pretext to blame us in the event of a breakdown of the fisheries negotiations and perhaps thereby to gain the sympathy of other member states; they would therefore have liked to defer our announcement until the prospects for the CFP negotiations became clearer. But following the French Presidential Election it is clear that there is unlikely to be CFP progress before the autumn at earliest. Foreign and Commonwealth Office Ministers are therefore prepared to accept an early announcement.

8. The Irish will need to be told in advance of our announcement, in order to obviate any possible row arising from the Republic's outstanding claim to the territorial waters off Northern Ireland.

9. The wording of the announcement will have to balance our domestic requirement to make clear our intention to legislate against our international need to emphasise our continuing commitment to UNLOSC. The following form of words would be suitable -

"The Government supports the provision in the Draft Convention on the Law of the Sea which envisages an extension of the territorial sea up to 12 nautical miles. The Government have set in hand the necessary preparations for United Kingdom legislation for such an extension. It is hoped that it will be possible to introduce this legislation in the context of the results emerging from the United Nations Conference on the Law of the Sea."

The announcement might most conveniently be made by way of an arranged Parliamentary Question to be answered by a Minister in the Foreign and Commonwealth Office.

10. Passage through straits. Extension will mean, in the United Kingdom's case as in others (see paragraph 6 above), that certain straits will fall entirely within territorial waters. UNLOSC has already agreed on a text which will provide for a regime of "transit passage" through such straits. If our legislation is introduced before UNLOSC has completed its work, suitable provisions will need to be made on this point, though note necessarily in the Bill itself. Officials will report further on what would best meet our requirements and be consistent both with existing international law and with the UNLOSC text; and on what could be said publicly in answer to questions. 3

11. Timing of legislation. The timing of legislation to extend the territorial sea, initially proposed for the 1981/82 programme, will be considered further in the light of Cabinet's discussion on 14 May (CC(81) 19th Conclusions, Minute 6).

CONCLUSIONS

12. In the light of the above factors my MISC 19 Group has concluded that we should announce our decision in principle to extend our territorial sea to 12 miles. This will be done, in the terms set out in paragraph 9 above, as soon as it can be arranged after the coming recess. Advance notice will be given in confidence not only to the Americans, but also to the Austrialians and New Zealanders and to our EC partners including the Irish and French in particular.

13. I invite OD colleagues to take note.

Department of Trade
1 Victoria Street
London, SW1H OET

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J B